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## Service of Process and Non-Residence

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Discussed in this article is the case of: *James Clayton Williams, Jr. v. Judson G. Williams, et al.* (CV-02-218), Alabama Court of Civil Appeals, (released April 15, 2005).

In December of 2002, Addie Ward Williams filed a complaint in the Monroe County Circuit Court of Alabama seeking a judgment canceling a deed that purported to have been executed by her and that conveyed a number of lots located in Monroe County, Alabama, to her son, James Clayton Williams, Jr. After personal service of process upon the defendant was attempted at two separate addresses in Huntsville, Alabama, the plaintiff filed a motion seeking an order permitting service by publication. The trial court granted the motion and a notice of the pending action was posted in a local newspaper for four consecutive weeks.

The trial court entered a judgment on July 23, 2003, declaring the deed at issue to be a forgery and divesting the defendant of title to the subject property based on the fact that service had been perfected upon the defendant by publication and that the defendant had failed to respond to the complaint. On October 1, 2003, the defendant filed a motion that the judgment was void contending he was not properly or adequately served with process.

The Alabama Court of Civil Appeals found that the trial court acted in absence of *in personam* jurisdiction by serving the defendant, a non-resident, by publication. The court found that the defendant had established a new domicile in Tennessee by moving there and exhibiting the intent to remain there permanently or for an indefinite length of time, which made him a non-resident of Alabama. The court further found that the record did not support the proposition that the defendant absented himself from Alabama

in order to avoid service. In summary, this case may have an adverse affect on judicial foreclosures, eviction/ejectment actions, mortgage reformation actions, and other similar actions in Alabama.

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